EVIDENCE – Foundation – Establishing "chain of custody" – Revised 3/2010

A foundation for introduction of evidence may be laid either through identification testimony or by establishing a chain of custody; "to require both would be unnecessary and would not ensure a fairer trial to the accused." *State v. Macumber*, 119 Ariz. 516, 521-22, 582 P.2d 162, 167-68 (1978); *see also State v. Amaya-Ruiz*, 166 Ariz. 152, 169, 800 P.2d 1260, 1277 (1990); *State v. Ashelman*, 137 Ariz. 460, 465, 671 P.2d 901, 906 (1983).

To establish a chain of custody, the State must show a continuity of possession. However, it need not disprove every remote possibility of tampering with the evidence while the evidence was in the possession of the police. In *State v. Jackson*, 170 Ariz. 89, 821 P.2d 1374 (App. 1991), the defendant argued that testimony about blood and semen samples was improperly admitted because the State failed to provide a sufficient chain of custody for the samples. The Court of Appeals found that although "the chain of custody was imprecise," *id*. at 93, 821 P.2d at 1378, the State did not need to prove that no tampering could have occurred, citing *State v. Davis*, 110 Ariz. 51, 514 P.2d 1239 (1973). Instead, the State simply needed to "reasonably show that the evidence [was] intact and unaltered," citing *State v. Washington*, 132 Ariz. 429, 431, 646 P.2d 314, 316 (App.1982):

> The evidence will be admitted if this showing is made, unless the defendant offers proof that the evidence has changed or been tampered with. *State v. Macumber*, 119 Ariz. 516, 582 P.2d 162, *cert. denied* 439 U.S. 1006, 99 S.Ct. 621, 58 L.Ed.2d 683 (1978); *State v. Davis*, *supra*. Here, the state proved that the items in question were always in the possession of the police. This is sufficient to show a chain of custody. *State v. Moreno*, 26 Ariz.App. 178, 547 P.2d 30 (1976).

State v. Jackson, 170 Ariz. 89, 93, 821 P.2d 1374, 1378 (App. 1991).

To establish a chain of custody, the State need not disprove every possibility of tampering, even when the claim is that the evidence may have been tampered with before the police obtained it. In *State v. Spears*, 184 Ariz. 277, 908 P.2d 1062 (1996), the police found a shell casing at a crime scene eleven days after a shooting. The defendant did not object to the

admission of the shell casing at trial, so he waived that claim absent fundamental error. *Id*. at 287, 908 P.2d at 1072. However, on appeal he argued that the shell casing should have been excluded from evidence because the State failed to show a chain of custody. The Arizona Supreme Court found no error, stating:

> To establish a chain of custody, the state must show continuity of possession, but it need not disprove "every remote possibility of tampering." *See State v. Hardy*, 112 Ariz. 205, 207, 540 P.2d 677, 679 (1975). Defendant offers no specific evidence to support his assertion that the shell casing may have been tampered with before police recovered it. At trial, the state introduced testimony showing that the shell casing remained intact and unaltered once the police recovered it. For these reasons, we find no fundamental error here.

Id.

In presenting evidence establishing a chain of custody, the prosecution need not call every person who had an opportunity to come in contact with the evidence sought to be admitted. *State v. Hurles*, 185 Ariz. 199, 206, 914 P.2d 1291, 1298 (1996), *see also State v. Davis*, 110 Ariz. 51, 54, 514 P.2d 1239, 1242 (1973). An exhibit may be admitted "when there is evidence which strongly suggests the exact whereabouts of the exhibit at all times, and which suggests no possibility of substitution or tampering." *Hurles, supra, quoting State v. Hardy*, 112 Ariz. 205, 207, 540 P.2d 677, 679 (1975). In *Hurles*, officer A testified that he saw officer B preparing to fingerprint the defendant and that officer B then gave officer A some fingerprint cards purporting to be the defendant's and bearing officer B's name as the person who did the fingerprinting. The Arizona Supreme Court held that, although there was no testimony from officer B that he gave the fingerprint cards to officer A, officer A's testimony strongly suggested both that fact "and that the whereabouts of the fingerprint card was known at all times." Furthermore, there was no suggestion, either from the defendant or from the record, that there was any real possibility of substitution or tampering. 185 Ariz. at 207, 914 P.2d at 1298. Therefore, the fingerprint cards were properly admitted. *Id.*

Any argument that the evidence could have been tampered with before the police

obtained it goes to the weight of the evidence, not its admissibility. In *State v. Gonzales*, 181 Ariz. 502, 892 P.2d 838 (1995), evidence was not gathered from the unsecured crime scene until seven days after the crime. At trial, the defendant argued that the State could not show a chain of custody because the evidence may have been contaminated in the meantime. The Arizona Supreme Court said that this argument "goes to the weight of the evidence, not its admissibility," citing *State v. Blazak*, 114 Ariz. 199, 203, 560 P.2d 54, 58 (1977), and noted, "The contamination argument was fully explored on cross examination and argued to the jury. The court did not abuse its discretion in admitting the physical evidence." *Gonzales*, 181 Ariz. at 511, 892 P.2d at 847; *see also State v. Spears, supra.*